GAHC010266232023

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/415/2023

RUBUL HAZARIKA
S/O LT. SURENDRA NATH HAZARIKA R/O TAKELA GAON P.O. AND PS TITABAR DIST. JORHAT ASSAM PIN 785632

VERSUS

ANIL PANTANI AND 18 ORS
S/O LT. BIHU PANTANI R/O NEAR CHARAIDEO GP OFFICE CHARAIDEO NO. 1 LINE P.O. AND P.S. MATHURAPUR DIST CHARAIDEO PIN 785688

2:NIPEN SAIKIA
S/O GONGADHAR SAIKIA R/O VILL. 3 BAKUPUKHURI P.O. NAMAIGARH HABI DHOLBAGAN P.S. MAHURAPUR DIST. CHARAIDEO PIN 785689

3:PRADIP RAJKONWAR
S/O LT. GAYRALA RAJKONWAR R/O MAHON GAON P.O. DHOLBAGAN P.S MAHURAPUR DIST. CHARIADEO PIN 785686

4:ATUL MOHAN
S/O LT. MAZARA MAHON R/O MAHON GAON P.O. TENGAPUKHURI P.S MAHURAPUR DIST. CHARIADEO PIN 785686

5:ROBIN MAHON
S/O NOT KNOWN BY PETITIONER
R/O MAHON GAON P.O. TENGAPUKHURI P.S MATHURAPUR P.S MAHURAPUR DIST. CHARIADEO PIN 785686

6:PHUNU GANJU
S/O LT. JAY GANJU R/O BAKUPUKHURI LENGIBOR GRANT JUNGLE MATI MULAGHAR HABI P.S MAHURAPUR DIST. CHARIADEO PIN 785686

7:RAJEN GONJU

S/O LT. JOY GONJU R/O BAKUMUPHURI LENGIBOR GRANT JUNGLE MATI MULAGHAR HABI P.S MAHURAPUR DIST. CHARIADEO PIN 785686

8:NAREN KANDULA
S/O LT. AMRUS KANDULA R/O BAKUMUPHURI LENGIBOR GRANT JUNGLE MATI MULAGHAR HABI P.S MAHURAPUR DIST. CHARIADEO PIN 785686

9:DEBEN PHUKAN
S/O LT. DEHIRAM PHUKAN R/O MOHAN GAON P.O. TENGAPUKHURI P.S MAHURAPUR DIST. CHARIADEO PIN 785686

10:SHASIN SASONI
S/O GHANA SASONI R/O RAJBARI LINE NEAR CO OPERATIVE GODOWN P.O DHOLBAGAN P.S MAHURAPUR DIST. CHARIADEO PIN 785686

11:BIPLOP DOWARA
S/O DOWARA GAON P.O. TENGAPUKHUR P.S MAHURAPUR DIST. CHARIADEO PIN 785686

12:SHANKOR PANTATI
S/O LT JITNA PANTATI R/O CHARIDEO 1 NO. LINE P.O. DHOLBAGAN P.S MAHURAPUR DIST. CHARIADEO PIN 785686

13:HEMANTA (BAPO) PANTATI
S/O LT. BELASON PANTATI R/O CHARAIDEO MONKHUSI P.O. DHOLBAGAN P.S MAHURAPUR DIST. CHARIADEO PIN 785686

14:ANIRUDHA NAHOK
S/O GHANA NAHOK R/O CHARAIDEO 8 NO. LINE P.O. DHOLBAGAN P.S MAHURAPUR DIST. CHARIADEO PIN 785686

15:PUTU (INDASWAR) BORUAH
S/O LT. JUWARAM BORUAH R/O P D CHALIHA ROAD AMULLAPATTY P.O. AND P.S. AND DIST. SIVASAGAR PIN 785640

16:BHASKAR JYOTI BORUAH
S/O SRI PUTU BORUAH R/O P D CHALIHA ROAD AMULLAPATTY P.O. AND P.S. AND DIST. SIVASAGAR PIN 785640

17:DOYMONTI SAIKIA BORUAH
W/O PUTU BORUAH R/O P D CHALIHA ROAD AMULLAPATTY P.O. AND P.S. AND DIST. SIVASAGAR PIN 785640

18:CIRCLE OFFICER
NAZIRA REVENUE CIRCLE SIVASAGAR ASSAM PIN 785685

19:DEPUTY COMMISSIONER

CHARAIDEO
ASSAM PIN 78569

Advocate for the Petitioner : MR. A R SHOME

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 11.12.2023

Heard Mr. A.R. Shome, learned counsel for the petitioner.

2. By filing this application under Article 227 of the Constitution of India, the petitioner has assailed the order dated 21.07.2023, passed by the learned Civil Judge (Junior Division), Charaideo (earlier known as Court of Munsiff) in TS No. 12/2022.

3. On 23.09.2022, the order was passed to proceed *ex parte* against the respondent nos. 18 and 19, the Circle Officer, Nazira Revenue Circle and Deputy Commissioner, Charaideo respectively. The said order was set aside by the impugned order dated 21.07.2023 by accepting the written statement filed by the proforma respondent nos. 18 and 19.

4. The learned counsel for the petitioner has submitted that one of the objections to the passing of order dated 21.07.2023 is the fact that the petition was only signed by the Circle Officer and not by the Deputy Commissioner and therefore, the respondent no.19 was unrepresented.

5. The Court is unable to accept the said submission because of the fact that the State Government issues a notification from time to time empowering

its Officers to represent the Government, which are passed in exercise of powers conferred by Rule 1 of Order XXVII of the CPC. As the petitioner has not produced the same, the Court shall presume that the said notification, if produced would have been read against the petitioner which is a presumption which can be drawn under the Illustration (g) of Section 114 of the Evidence Act.

6. The other ground of challenge is that the impugned order was passed long after the order dated 23.09.2022 and therefore, the petition for setting aside the *ex parte* order dated 23.09.2022 could not have been passed without first adjudicating the petition for condoning the delay. According to the learned counsel for the petitioner, the provision of Article 123 of the Schedule to the Limitation Act would apply in the case. In support of his submission reliance is placed on the case of *Auto and Hardware Stores and Anr. Vs. State of Bihar and Ors., AIR 2004 Patna 13* to project that under Section 3 of the Limitation Act, the issue of the limitation can be raised at any point of time and that if the application is barred by limitation, the petition or appeal could not have been decided on merit.

7. The said point raised by the learned counsel for the petitioner appears to have no merit because Article 123 of the Schedule to the Limitation Act can only be applied in respect of an application for setting aside *ex parte* decree or to hear an appeal decreed or heard *ex parte*. Order to proceed *ex parte* against a defendant is not a situation which is envisaged without the scope of Article 123 of the Schedule to the Limitation Act. Therefore, if an application is filed under Order IX Rule 7 of the CPC, as the said provision does not provide for a period of limitation, the scope of the application being barred by limitation cannot arise and cannot be an issue to entertain a challenge against the order

dated 21.07.2023. Therefore, for the said reasons, the case cited by the learned counsel for the petitioner has absolutely no application in the present facts and circumstances of the case.

8. Therefore, the Court does not find any merit in the challenge to the impugned order dated 21.07.2023, passed by the learned Civil Judge (Junior Division), Charaideo in TS No. 12/2022. Accordingly, this application stands dismissed at the motion stage without issuance of notice on the respondent.

9. Let a copy of this order be sent to the Court of learned Civil Judge (Senior Division), Charaideo to make it a part of the record of TS No. 12/2022.

JUDGE

Comparing Assistant